IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No. 6189 of 2004

For Approval and Signature:

HONOURABLE MR.JUSTICE K.A.PUJ

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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ASHOKBHAI LAXMANBHAI RATHOD - Applicant(s)

Versus

STATE OF GUJARAT & 4 - Respondent(s)

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Appearance :

MR TS NANAVATI for Applicant(s) : 1,
PUBLIC PROSECUTOR for Respondent(s) : 1,
None for Respondent(s) : 2 - 5.

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CORAM : HONOURABLE MR.JUSTICE K.A.PUJ

Date : 07/09/2005

ORAL JUDGMENT

1.The applicant-original complainant has filed this petition under Section 482 of the Code of

Criminal Procedure praying for quashing and setting aside the order dated 10.02.2004 passed by the learned J.M.F.C., Amod in Criminal Case No. 110 of 2004 (originally Inquiry Case No. 19 of 2003) to the extent that appropriate process be ordered to be issued against the accused Nos. 1 to 4-opponents Nos. 2 to 5 of the present petition herein for offences U/s. 3(1)(5)(10)of the Prevention of Atrocities (Scheduled Caste and Scheduled Tribes) Act and further appropriate process be ordered to be issued against the accused No.4 i.e. Ishwarbhai Kalidas Patel-opponent No.5 herein to the extent of the offences U/s. 323, 324, 504 and 114 of IPC and consequentially be pleased to pass other appropriate orders in pursuance thereto.

2.Mr. T.S. Nanavati learned advocate appearing for the applicant No.1 has submitted that the learned Magistrate has issued process only

against the accused Nos. 1 to 3 for the offences U/s. 323, 324, 504 and 114 of IPC vide order dated 10.02.2004. Mr. Nanavati has further submitted that learned J.M.F.C. without giving any reason has not issued process against the accused No.4 Ishwarbhai Kalidas Patel who is also identically and similarly situated and whose name has been made out in the magisterial complaint. Despite this, the process was only issued against the accused Nos. 1 to 3 and no process was issued against accused No.4 and no reasons have been given.

3.Being aggrieved by the said order, the present petition is filed before this Court. It is submitted by Mr. Nanavati that it is settled principle of law laid down by the Hon'ble Supreme Court in the case of **State of Bihar V/s. Ramesh Singh** AIR 1977 S.C. 2018 wherein the Hon'ble Supreme Court has held that reading Sections 227 and 228 together in juxtaposition,

as they have got to be, it would be clear that at the beginning and at the initial stage of the trial the truth, veracity and effect of the evidence which the prosecutor proposes to adduce are not to be meticulously judged. Nor is any weight to be attached to the probable defence of the accused. It is not obligatory for the Judge at that stage of the trial to consider in any detail and weigh in a sensitive balance whether the facts, if proved, would be incompatible with the innocence of the accused or not. The standard of test and judgment which is to be finally applied before recording a finding regarding the guilt or otherwise of the accused is not exactly to be applied at the stage of deciding the matter under Section 227 or Section 228 of the Code. At that stage the Court is not to see whether there is sufficient ground for conviction of the accused or whether the trial is sure to end in his conviction. On the basis of this judgment of the Hon'ble

Supreme Court, Mr. Nanavati has submitted that the learned Magistrate has passed the order in a very perfunctory manner without appreciating all aspects and depositions and material placed before him. Mr. Nanavati has, therefore, submitted that the complainant has to file the present application before this Court.

4.Mr. H.L. Jani learned APP appearing for the respondent No.1 State has submitted that the present petitioner has lodged complaint before the Amod Police Station on 19.09.2003 in which only 3 names were mentioned. Mr. Jani further submitted that inspite of the fact that the complaint was filed before the Amod Police Station, it is stated that he has gone to the Police Station on 19.09.2003 at 7:30 p.m. and when complaint was not registered, the present complainant has filed complaint before the learned Magistrate. He has, therefore, submitted that the present complainant has

subsequently changed his mind as the name of the accused No.4 was subsequently added in the complaint filed on 26.09.2003. The learned J.M.F.C. has considered the statement of witnesses and of the complainant, the complaint of the present complainant and has come to the conclusion that no process was required to be issued against accused No.4 in respect of the offence alleged and issued process against accused Nos. 1 to 3 under Sections 323, 324, 504 and 114 of Indian Penal Code and no offence was made by the accused Nos. 1 to 3 under the provisions of Section 3(1)(5)(10) of the Prevention of Atrocities (Scheduled Caste and Scheduled Tribe) Act. It is therefore, submitted that no interference is called for by this Court while exercising power U/s. 482 of the Code of Criminal Procedure.

5. Heard Mr. Nanavati learned advocate appearing for the petitioner and Mr. H.L. Jani learned

APP for the respondent State. The Court found that there is no infirmity in the order passed by the learned Magistrate by not issuing process against the accused No.4. The complainant has submitted that the complaint was filed by the present complainant before Amod Police Station on 19.09.2003. In Criminal Case No. 110 of 2003 (Initially registered as Inquiry case No. 19 of 2003), filed on 26.09.2003, the name of the accused No.4 was shown and his name was incorporated in the said magisterial complaint dated 26.09.2005. The learned Magistrate has ordered inquiry U/s. 202 of the Code and examined the witnesses and thereafter passed order for issuance of process. The learned Magistrate has made it clear in the impugned order that he has considered the original complaint filed before the Amod Police Station on 19.09.2003, complaint filed before him on 26.09.2003 and the statements recorded by him pursuant to

inquiry U/s. 202 of the Code. The complainant has made the false statement in the complaint that the police has not taken his complaint and hence the complaint was filed before the Magistrate. As a matter of fact, the said complaint was stated as N/C. Case NO. 14 of 2003 and since the copy of F.I.R. was not given the magisterial complaint was filed. In this subsequent complaint, the name of the Accused No.4 was added. The learned Magistrate was of the view that the name of Accused No.4 was wrongly impleaded. It can not, therefore, be said that the process was issued without any application of mind. Even otherwise, it is settled law that at the time of issuance of process, a detailed speaking order is not required to be passed. The order regarding issuance or non-issuance of process against a particular accused or for a particular offence, can not normally be entertained in a petition filed U/s. 482 of the code of Criminal

Procedure. The judgment sited by Mr. Nanavati may not render any assistance to the petitioner, especially when there was apparent contradiction in the statements and change in the complainant's version after one week from the date of police complaint.

6.No case is made out for interference by this Court. The application is therefore, rejected. It is, however, clarified that during the course of the trial, if any evidence is led before the learned Magistrate against the accused No.4, it is open for him to issue appropriate process during the course of trial.

(**K.A.PUJ,J.)**

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